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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Debra Morales Ruiz, an individual, for
 herself and on behalf of and as pending
 Personal Representative of The Estate of
 Alexander Chavez; Alex George Chavez,
 an individual,

Plaintiffs,

vs.

County of Maricopa, a governmental
 entity; Brandon Smith and Jane Doe
 Smith; Paul Penzone and Jane Doe
 Penzone; David Crutchfield, an individual;
 Lisa Struble, an individual; Kyle Moody
 and Jane Doe Moody; Arturo Dimas and
 Jane Doe Dimas; Tyler Park and Jane Doe
 Park; Gerardo Magat and Jane Doe Magat;
 Daniel Hawkins Jr. and Jane Doe
 Hawkins; Javier Montano and Jane Doe
 Montano; James Dailey and Jane Doe
 Dailey; Trevor Martin and Jane Doe
 Martin; Greggory Hertig and Jane Doe
 Hertig; John Chester and Jane Doe
 Chester; Jorge Espinosa Jr. and Jane Doe
 Espinosa; Morgan Rainey and John Doe
 Rainey; Stefanie Marsland and John Doe
 Marsland; and, John and Jane Does 1-40,

Defendants.

No.: CV-23-02482-PHX-SRB (DMF)

**PLAINTIFFS' MOTION TO EXTEND
 TIME TO SERVE DEFENDANTS
 MAGAT, DAILEY, AND ESPINOSA
 WITH PROCESS**

(Assigned to the Honorable Susan R.
 Bolton and referred to the Honorable
 Deborah M. Fine)

Through counsel undersigned and pursuant to Federal Rule of Civil Procedure 4(m), Plaintiffs Debra Morales Ruiz – for herself, and on behalf of and as pending Personal Representative of The Estate of, Alexander Chavez – and Alex George Chavez (collectively, “Plaintiffs”) hereby move for an additional, and relatively brief, thirty (30) day period within which to serve Defendants Gerardo and Jane Doe Magat, James and Jane Doe Dailey, and Jorge (Jr.) and Jane Doe Espinosa (collectively, the “Unserved Defendants”) with process, in accordance with the Proposed Order submitted concurrently herewith. Because good cause exists for, and the Unserved Defendants will not be prejudiced by, the issuance of such order, the Court should exercise the broad discretion it possesses to grant the requested relief. This Motion is supported by the relevant parts of the record in this matter and the Memorandum of Points and Authorities below.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT BACKGROUND FACTS

Plaintiffs originally filed this action in Arizona state court on August 8, 2023. Compl. at 1, ECF No. 1-1. Plaintiffs were ultimately able to serve every Defendant named in their original Complaint except for the Unserved Defendants, because those Defendants were no longer active with the Maricopa County Sheriff’s Department. On November 29, 2023, the served Defendants removed this action to this Court. Notice of Removal, ECF No. 1.

On January 19, 2024, this Court issued an Order containing a handful of rulings, one of those being:

[i]f Plaintiff does not either obtain a waiver of service of the summons or complete service of the Summons and Complaint on a Defendant within 90

1 days of the filing of the Notice of Removal or within 60 days of the filing of
 2 this Order, *whichever is later*, the action may be dismissed as to each
 Defendant not served.

3
 4 Order 2:21-24, ECF No. 3 (emphasis added) (citing Fed. R. Civ. P. 4(m)). Because sixty
 5 (60) days from that Order was a later date than ninety (90) days from the Notice of
 6 Removal, Plaintiffs thus had until up to and including March 19, 2024 to serve the
 7 Unserved Defendants. Unfortunately, because Plaintiffs' counsel's paralegal inadvertently
 8 failed to calendar that deadline, it passed, and the Unserved Defendants remained
 9 Unserved.
 10

11 **II. LEGAL ARGUMENT**

12 “Rule 4(m) of the Federal Rules of Civil Procedure provides that ‘if the plaintiff
 13 shows good cause for the failure [to serve], the court *must* extend the time for service for
 14 an appropriate period.’” *MLB Sales Inc. v. Rk Gems LLC*, No. CV-23-01526-PHX-DWL,
 15 at *3 (D. Ariz. Nov. 30, 2023) (emphasis added) (quoting Fed. R. Civ. P. 4(m)). Here,
 16 good cause exists for an additional thirty (30) days for Plaintiffs to serve the Unserved
 17 Defendants because of the unfortunate and inadvertent failure of counsel's paralegal to
 18 calendar the service deadline.
 19
 20

21 Nevertheless, even if such failure does not constitute good cause to extend the
 22 deadline, “District courts also have ‘*broad*’ . . . discretion to extend the service deadline
 23 ‘*even in the absence of good cause.*’” *MLB Sales Inc. v. Rk Gems LLC*, No. CV-23-01526-
 24 PHX-DWL, at *3 (D. Ariz. Nov. 30, 2023) (emphasis added) (quoting *Efaw v. Williams*,
 25 473 F.3d 1038, 1040 (9th Cir. 2007)); *Arellano v. San Luis*, No. CV-16-03423-PHX-DGC,
 26 at *7 (D. Ariz. May 8, 2017) (“[E]ven without a showing of good cause, a district court
 27
 28

1 may utilize its broad discretion to extend the time for service.” (quoting *United States v.*
2 *2,164 Watches*, 366 F.3d 767, 772 (9th Cir. 2004)); *see also* *Dimitrov v. Stavatti*
3 *Aerospace Ltd.*, No. CV-23-00226-PHX-DJH, at *2 (D. Ariz. Oct. 12, 2023) (“District
4 courts enjoy broad discretion when making extension decisions under Rule 4(m).” (citing
5 *In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001))).

7 In considering an extension request under Rule 4(m), Courts consider whether the
8 extension would cause prejudice to defendant(s). *Efaw*, 473 F.3d at 1041. Here, there is
9 absolutely no evidence, or reason to believe, that the Unserved Defendants would incur
10 prejudice from the brief additional period requested. As noted above, the service deadline
11 was March 19, 2024 – only a month ago. Should the Court act promptly in granting the
12 thirty (30) days Plaintiffs request, that service deadline would likely be extended by no
13 more than three (3) months total. The notion that a mere three (3) month delay in service
14 would prejudice the Unserved Defendants strains credulity.

17 **III. CONCLUSION**

18 Ultimately, “[c]ourts should give the Rule 4 provisions a liberal and flexible
19 construction.” *Pearson v. GEO Grp. Inc.*, No. CV-16-03094-PHX-DGC (BSB), at *5 (D.
20 Ariz. Mar. 19, 2018) (citing *Borzeka v. Heckler*, 739 F.2d 444, 446-48 (9th Cir. 1984)).
21 Here, utilizing a liberal and flexible construction of Rule 4, and in the interests of justice,
22 judicial efficiency, and a resolution on the merits, this Court should utilize the broad
23 discretion it possesses to grant Plaintiffs an additional and relatively brief thirty (30) day
24 period within which to serve the Unserved Defendants, in accordance with the Proposed
25 Order filed concurrently herewith.
26
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1 **RESPECTFULLY SUBMITTED** this 24th day of April 2024.

2 **MILLS + WOODS LAW, PLLC**

3
4 By /s/ Sean A. Woods
5 Robert T. Mills
6 Sean A. Woods
7 5055 N 12th Street, Suite 101
8 Phoenix, AZ 85014
9 Attorneys for Plaintiffs

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on April 24, 2024, I electronically transmitted the foregoing
12 document to the Clerk's Office using the ECF System for filing and transmittal of a Notice
13 of Electronic Filing to the following ECF registrants:

14 Courtney R. Glynn
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23 *Attorneys for Maricopa County, Dimas, Hawkins, Hertig, Martin, Montano, Moody, Park,*
24 *Smith, Chester, Rainey, and Marsland and the Maricopa County Sheriff*

25
26
27
28 /s/ Ben Dangerfield